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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 40658
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2012-7432
v.)	
)	
JAMES GERALD BECK III,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

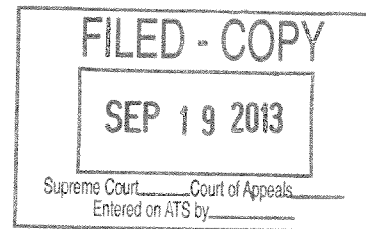
HONORABLE TIM HANSEN
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

SHAWN F. WILKERSON
Deputy State Appellate Public Defender
I.S.B. #8210
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534



ATTORNEYS FOR
DEFENDANT-APPELLANT

ATTORNEY FOR
PLAINTIFF-RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

Mr. Beck timely appealed from the district court's judgment of conviction. On appeal, Mr. Beck asserts that the district court erred when it denied his motion to suppress the State's evidence.

Statement of the Facts and Course of Proceedings

At approximately 11:30 p.m., Officer Viens activated the overhead lights on his patrol car and pulled over Mr. Beck for riding a bicycle without a headlight, which is in contravention of Boise City Code § 10-14-03(D). (R., pp.37, 53.) Officer Viens asked Mr. Beck if he had a head light for his bicycle and Mr. Beck admitted that he did not. (R., p.53.) Officer Viens asked Mr. Beck for identification and Mr. Beck provided him an identification card issues by the State of Idaho. (R., p.53; 09/19/12 Tr., p.11, L.25 - p.12, L.5.) Officer Viens then asked Mr. Beck about his travel plans and Mr. Beck stated that he had just gotten out of work and was going to his home. (R., p.53; 09/19/12 Tr., p.26, Ls.17-22.)

During his interaction with Officer Viens, Mr. Beck did not display any indications or behavior associated with drug use. (09/19/12 Tr., p.43, L.12 - p.44, L.7.) Officer Viens testified that Mr. Beck did not appear to be under the influence of any substance. (09/19/12 Tr., p.44, Ls.2-7.) Officer Viens also testified that Mr. Beck's behavior was normal, that he had no reason to fear for his safety. (09/19/12 Tr., p.44, Ls.8-19.)

Even though Mr. Beck was not displaying any suspicious behavior, Officer Viens then asked Mr. Beck about his criminal record and Mr. Beck stated that he did not have any outstanding warrants, but he admitted that he had a prior criminal record.

(R., p.53.) Mr. Beck said that he had been in trouble for theft related offenses. (R., pp.53-54.) At that point, Officer Viens contacted dispatch to conduct a background check. (R., p.53; 09/19/12 Tr., p.27, Ls.12-21.) Officer Viens then asked Mr. Beck if he was on either parole or probation and Mr. Beck told him that he topped out in 2005. (09/19/12 Tr., p.28, L.21 - p.29, L.11.)

After asking the foregoing questions, Officer Viens received Mr. Beck's background report from dispatch, which indicated that Mr. Beck had a criminal history. (09/19/12 Tr., p.29, Ls.12-19.) However, it also indicated that Mr. Beck did not have any outstanding warrants, and that Mr. Beck was not on probation or parole. (R., pp.53-54.) Officer Viens asked Mr. Beck if he had anything illegal in his possession. (R., p.54.) Instead of answering the question, Mr. Beck asked Officer Viens if he was going to go to jail. (R., p.54.) Officer Viens again asked if Mr. Beck had anything illegal. (R., p.54.) Mr. Beck said he did and that it was a diabetic syringe. (R., p.54.) Officer Viens then asked if Mr. Beck had anything else which was illegal and if it was methamphetamine. (R., p.54.) Mr. Beck nodded his head affirmatively. (R., p.54.) Mr. Beck was subsequently arrested. (R., p.54.)

During the entire interaction with Officer Viens Mr. Beck was never told that he was free to leave. (09/19/12 Tr., p.14, Ls.4-7.) Officer Viens testified that during the entire interaction Mr. Beck was detained. (09/19/12 Tr., p.41, L.24 - p.42, L.7.) Officer Viens never attempted or intended to write a citation for Mr. Beck's failure to have a bicycle headlight. (09/19/12 Tr., p.16, Ls.1-7, p.42, L.23 - p.43, L.1.) In fact, Officer Viens testified that he only asked about the headlight at the beginning of the conversation and that all of his subsequent questions for Mr. Beck dealt with parole, probation, and Mr. Beck's prior criminal history. (09/19/12 Tr., p.42, Ls.8-22.)

Mr. Beck was charged, by information, with possession of a controlled substance and possession of drug paraphernalia. (R., pp.23-24.) Mr. Beck filed a motion to suppress based on a theory that Officer Viens abandoned the original purpose of the stop and illegally seized Mr. Beck to investigate unrelated criminal activity without reasonable suspicion that Mr. Beck was engaging in any criminal activity unrelated to the traffic infraction. (R., pp.26-27, 36-41, 53-56.) A hearing was held on the motion and trial counsel conceded that the overall length of the traffic stop at issue comported with the length of a normal traffic stop which usually lasts about fifteen to twenty minutes. (09/19/12 Tr., p.52, Ls.17-25.) However, trial counsel went on to clarify that he was challenging that fact that Officer Viens' questions were unrelated to the purpose of the stop and, therefore, unreasonably extended the length of the detention. (09/19/12 Tr., p.53, Ls.1-13.) The district court determined that there was no Fourth Amendment violation when Officer Viens asked Mr. Beck general questions about his background. (R., p.55.) Then turning to the issue of whether Officer Viens questions extended the length of the stop, the district court concluded that there was no Fourth Amendment violation because Mr. Beck "conceded that the duration of the stop was reasonable." (R., p.55.) As such, Mr. Beck's suppression motion was denied by the district court. (R., pp.53-54.)

Pursuant to a plea agreement, Mr. Beck pleaded guilty to possession of a controlled substance and preserved the ability to raise the denial of his suppression motion on appeal. (R., pp.58-60.) Thereafter, the district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.71-73.) Mr. Beck timely appealed. (R., pp.75-77.)

ISSUE

Did the district court err when it denied Mr. Beck's motion to suppress the State's evidence?

ARGUMENT

The District Court Erred When It Denied Mr. Beck's Motion To Suppress The State's Evidence

A. Introduction

Mr. Beck argues that the district court erred when it concluded that Mr. Beck conceded that the length of his stop was reasonable. Specifically, he argues that trial counsel was generally stating that a routine traffic stop lasts about fifteen to twenty minutes. However, trial counsel never conceded that Officer Viens' reasonably extended the detention when he asked questions unrelated to the purpose of the stop. Additionally, Mr. Beck argues that Officer Veins unreasonably extended the duration of the stop when he asked Mr. Beck questions after receiving the background report from dispatch because at that point the reason for the stop had been effectuated and Officer Viens had not discovered any new facts which could be the basis for reasonable suspicion that some criminal activity, unrelated to the traffic infraction, was afoot.

B. Standard Of Review

The review of a suppression motion is bifurcated. *State v. Lafferty*, 139 Idaho 336, 338 (Ct. App. 2003). When a decision on a motion to suppress is challenged, the trial court's findings of fact that are supported by substantial evidence are accepted; however, the application of constitutional principles to the facts as found are freely reviewed. *State v. McCall*, 135 Idaho 885, 886 (2001). At a suppression hearing, the power to assess the credibility of all witnesses, weigh evidence, resolve factual conflicts and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106 (1995).

C. Officer Veins Unreasonably Extended The Traffic Stop By Asking Questions Unrelated To The Purpose Of The Stop

The Idaho and Federal Constitutions protect “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST. amend. IV; Idaho CONST. Art. I, § 17. The purpose of these constitutional rights is to “impose a standard of reasonableness upon the exercise of discretion by governmental agents and thereby safeguard an individual’s privacy and security against arbitrary invasions.” *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002) (citing *Delaware v. Prouse*, 440 U.S. 648, 653-654 (1979)). The U.S. constitution’s safeguard against unreasonable searches and seizures applies to the seizures of persons through detentions falling short of arrest or arrests. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *Terry v. Ohio*, 392 U.S. 1, 16 (1968). The stop of a vehicle constitutes a seizure of its occupants and is, therefore, subject to the constitutional restraints. *State v. Flowers*, 131 Idaho 205, 208 (Ct. App. 1998). A vehicle stop is of limited magnitude compared to other types of seizures; however, it is nonetheless a “constitutionally cognizable” intrusion and, therefore, may not be conducted “at the unbridled discretion of law enforcement officials.” *Delaware v. Prouse*, 440 U.S. 648, 661 (1979).

When the purpose of the detention is to investigate a possible traffic offense or other crime, it must be based upon reasonable, articulable suspicion of criminal activity. *State v. Schumacher*, 136 Idaho 509 (Ct. App. 2001); *Florida v. Royer*, 460 U.S. 491, 498 (1983). Although the required information leading to formation of reasonable suspicion in the mind of the police officer is less than the information required to form probable cause, it still “must be more than mere speculation or a hunch on the part of the police officer.” *State v. Cerino*, 141 Idaho 736, 738 (Ct. App. 2005). The

reasonableness of the officer's suspicion is evaluated based upon the totality of the circumstances at the time of the seizure. *Flowers*, 131 Idaho at 208.

In the case at hand, Officer Viens observed Mr. Beck riding a bicycle at nighttime without a light which is required under Boise City Code § 10-14-03(D). (R., p.53.) As such, Mr. Beck does not challenge the legality of the initial detention. However, he asserts that Officer Viens unreasonably extended the stop. Specifically, he argues that Officer Vein unreasonably extended the stop for approximately twelve to fifteen seconds when he asked Mr. Beck incriminating questions after receiving the report from dispatch.

1. Mr. Beck Did Not Concede That Officer Viens' Questions Reasonably Delayed The Stop

As a preliminary matter, Mr. Beck must first address the question of whether he conceded that the duration of the stop was reasonable. Trial counsel's statement at the end of the suppression hearing, while inartful, merely clarified that the overall length of Mr. Beck's stop was about the average length of time required for a routine traffic stop. However, trial counsel never abandoned the claim that Officer Viens' questions temporarily extended the stop in a manner which was unreasonable. Trial counsel's specific statements are as follows:

I will concede this point. I'll concede that the stop didn't exceed what was necessary to carry out the purpose for the stop. I don't think there is any question that that is probably true. A typical infraction would probably take ten or 15 minutes to write out and that interaction was fairly brief. So I concede that.

Our issue in this case is whether or not the questioning was carefully tailored to the purpose of the stop and the fact that Officer Viens did not carefully restrict his questions to the purpose of the stop, which required unless some other particularized, objective reasons come up to make him suspicious of criminal activity.

Officer Viens himself testified the he had no intention of giving Mr. Beck an infraction. So this wasn't about the headlight, it was about finding other criminal activity which he ultimately did. But without justification.

(09/19/12 Tr., p.52, L.18 - p.53, L.12.)

Mr. Beck's characterization of trial counsel's statements is consistent with the memorandum filed in support of his suppression motion. For example, Mr. Beck recognized in his brief that in Idaho it is not unreasonable for one officer to ask questions while another officer was running a background check on the driver's driving status or filling out a citation. (R., p.39.) Mr. Beck did argue that once the purpose of the stop has been effectuated it is unreasonable for an officer to extend the stop temporally to ask questions unrelated to the stop, unless the officer discovered new facts which could expand the scope of the initial stop. (R., p.39.) Mr. Beck then argued that since Officer Viens' questions were unrelated to the stop and that Officer Viens did not discover any new facts creating suspicion unrelated to the initial stop and, therefore, Officer Viens' questions unreasonably extended the length of the stop. (R., pp.39-40.)

In sum, trial counsel merely made a general statement that the fifteen minute length of the stop was not inherently unreasonable. However, he never conceded that Officer Viens' questions which extended the stop constituted an unreasonable extension of the stop. Therefore, the district court erred when it concluded that trial counsel conceded that the length of the stop was reasonable.

2. The Questions Officer Viens Asked Mr. Beck After Receiving The Report From Dispatch Unreasonably Extended The Duration Of The Stop

Now turning to the substance of Mr. Beck's argument, to wit, that Officers Viens' questions unreasonably extended the stop. A routine traffic stop is normally limited in

scope and of short duration; therefore, it is more analogous to an investigative detention than a custodial arrest and, as such, is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). *Prouse*, 440 U.S. at 653-654. Under *Terry*, an investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *Id.* at 21.

The question of whether an investigative detention is reasonable requires an inquiry into both whether the officer's action was justified at the inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. *State v. Parkinson*, 135 Idaho 357, 361 (Ct. App. 2000). However, the purpose of a stop is not fixed at the time the stop is initiated; a routine traffic stop might turn up suspicious circumstances that justify an officer asking questions unrelated to the stop. *Id.* at 362.

The United States Supreme Court has stated that an investigative detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *State v. Gutierrez*, 137 Idaho 647, 650 (Ct. App. 2002) (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)). Further, an individual "may not be detained even momentarily without reasonable, objective grounds for doing so." *Id.* In *United States v. Valadez*, 267 F.3d 395 (5th Cir. 2001), the court held that, "[f]urther detention was not lawful after the point at which the purposes of the stop [were] resolved." *Id.* at 398.

It is therefore not necessarily a constitutional violation for an officer who has stopped someone for a traffic violation to ask unrelated questions about drugs or to run a drug dog around the outside of the vehicle. *State v. Aguirre*, 141 Idaho 560, 563

(Ct. App. 2005). Idaho Courts have held that the questioning and use of a drug dog during a stop does not violate the Fourth Amendment when it does not extend the duration of the stop beyond that which was necessary to address the traffic violation. See *State v. Silva*, 134 Idaho 848, 852-853 (Ct. App. 2000) (holding that an officer's request to search a car was lawful where the request was made before the issuance of the traffic citation had been completed and such request lengthened the process only by a second or two); see also *Parkinson*, 135 Idaho at 362-363 (holding that it was permissible for one officer to question a vehicle's driver about drugs and weapons and to take a drug dog around the car while another officer was busy checking with dispatch on the driver's status and writing out a traffic citation).

Additionally, the Idaho Court of Appeals concluded that it was an unwarranted intrusion upon the vehicle occupants' privacy and liberty for an officer to question a driver about matters unrelated to the traffic stop after the officer had fulfilled the purpose of the stop by issuing a written warning to the driver. *Gutierrez*, 137 Idaho at 651-653. Similarly, the Court of Appeals concluded that a motorist had been unlawfully detained where all routine traffic stop procedures had been completed when additional officers arrived and then requested consent to search the vehicle. *State v. Zavala*, 134 Idaho 532 (Ct. App. 2000).

Officer Viens improperly extended the stop beyond the purpose of issuing a citation for failing to have a headlight for the bicycle. Specifically, the stop was unreasonably extended for a period of twelve to fifteen seconds which occurred after Officer Viens received confirmation from dispatch that Mr. Beck had no outstanding warrants. At that point in time, Officer Viens had fully effectuated the purpose of the stop and had the choice of telling Mr. Beck he was free to leave or he could have written

Mr. Beck a citation for failing to have a headlight on his bicycle. Instead, Officer Viens detained Mr. Beck to begin a new criminal investigation without any reasonable suspicion when he asked Mr. Beck if he had anything illegal. (R., p.54.) Mr. Beck did not answer the question and asked Officer Viens if he was going to jail. (R., p.54.) Officer Viens then asked Mr. Beck if he had anything illegal. (R., p.54.) Mr. Beck answered that question with an incriminating response. (R., p.54.) According to the audio recording of the stop, the delay caused by these questions was approximately twelve to fifteen seconds. (State's Exhibit 1, 6:00 - 6:22.) The twelve to fifteen second delay was unreasonable because it was not supported by reasonable suspicion.

Support for Mr. Beck's argument can be found in *State v. Gomez*, 144 Idaho 865 (Ct. App. 2007), where one of the issues on appeal was whether an officer's decision to observe Gomez for visual signs of inebriation while another officer visually inspected the interior of a car unreasonably extended what was otherwise a constitutionally valid seizure. In that case, Gomez was pulled over for speeding. *Id.* at 867. Officer Sullivan noticed that Gomez's eyes were red, but he could not smell the odor of alcohol. *Id.* Gomez was subsequently cited for speeding. *Id.* Gomez was then delayed for twelve to sixteen seconds after he received the citation for, among other things, Officer Sullivan to observe Gomez for signs of intoxication and to confirm that the citation was signed and in order. *Id.* at 869. During these twelve to sixteen seconds another officer observed a gun case in Gomez's car. *Id.* Gomez was eventually arrested for the charge of felon in possession of a firearm. *Id.* at 868. Gomez filed a suppression motion and argued that the twelve to sixteen second delay was an unreasonable delay unrelated to speeding. *Id.* Gomez's motion was denied and Gomez appealed. *Id.*

On appeal, the Idaho Court of Appeals ultimately held that under the unique circumstances surrounding his encounter with the police the twelve to sixteen second delay was reasonable. *Id.* at 869. In coming to this conclusion, the *Gomez* Court held that the fact that Gomez had red eyes, did not know how fast he was going, and had a spoke in a rapid and broken pattern justified the continuation of the stop to observe for other signs of intoxication. *Id.*

While Gomez lost his appeal, the case is instructive in this matter because the mere delay of twelve to sixteen seconds was deemed long enough by the Court of Appeals to be analyzed under Fourth Amendment principles. When compared to the facts in this case, the twelve to fifteen second delay is unreasonable because Officer Viens had no particularized facts from which he could develop reasonable suspicion to delay the stop to begin an investigation unrelated to the initial traffic infraction. Officer Viens testified that Mr. Beck did not display any indications or behavior associated with drug use. (09/19/12 Tr., p.43, L.12 - p.44, L.7.) Officer Viens also testified that Mr. Beck did not appear to be under the influence of any substance. (09/19/12 Tr., p.44, Ls.2-7.) Officer Viens went on to testify that Mr. Beck's behavior was normal, that he had no reason to fear for his safety, and dispatch confirmed that Mr. Beck did not have any outstanding warrants, and that Mr. Beck was not on probation or parole. (09/19/12 Tr., p.44, Ls.8-19.) As such, Officer Viens was not aware of any facts which would justify extending the stop to ask Mr. Beck if he possessed anything illegal.

Additionally, Officer Viens had abandoned the initial purpose of the stop when he asked Mr. Beck if he possessed anything illegal. Officer Viens never attempted to write a citation for Mr. Beck's failure to have a bicycle headlight. (09/19/12 Tr., p.16, Ls.1-7.) Officer Viens also testified that he never intended to write citation for Mr. Beck's failure

to have a headlight. (09/19/12 Tr., p.42, L.23 - p.43, L.1.) In fact, Officer Viens testified that he only asked about the headlight at the beginning of the conversation and that all of his subsequent questions for Mr. Beck dealt with parole, probation, and Mr. Beck's prior criminal history. (09/19/12 Tr., p.42, Ls.8-22.)

In the event this Court determines that Officer Viens unreasonably extended the duration of the stop, then all of the evidence discovered after that illegal detention must be suppressed. *Segura v. United States*, 468 U.S. 796, 815 (1984); *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Bainbridge*, 117 Idaho 245, 249 (1990). Moreover, Mr. Beck raised his claims under both the United States Constitution and the Idaho Constitution. (R., p.36.) Pursuant to Idaho CONST. Art. I, § 17, the remedy is suppression of the State's evidence. *State v. Arregui*, 44 Idaho 43 (1927); *State v. Guzman*, 122 Idaho 981 (1992).

In sum, Officer Viens abandoned the purpose of the stop and began an unrelated criminal investigation for which he had no facts supporting reasonable suspicion that Mr. Beck was engaging in any illegal activity unrelated to the traffic infraction. As such, Officer Viens illegally extended the stop for a period of twelve to fifteen seconds, a delay which has been deemed long enough to be subject to scrutiny under Fourth Amendment principles. *Gomez*, 144 Idaho at 869. Since the extension of the stop was not justified under the foregoing Fourth Amendment principles, Mr. Beck was illegally seized and all of the evidence subsequently discovered by Officer Viens which resulted from that illegal detention must be suppressed.

CONCLUSION

Mr. Beck respectfully requests that this Court reverse the district court's order denying his motion to suppress and remand this case to the district court for further proceedings.

DATED this 19th day of September, 2013.

A handwritten signature in black ink, appearing to read 'Shawn F. Wilkerson', written over a horizontal line.

SHAWN F. WILKERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

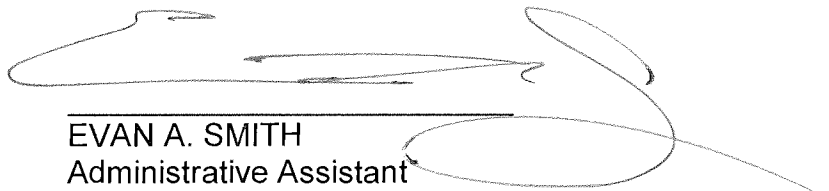
I HEREBY CERTIFY that on this 19th day of September, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JAMES GERALD BECK III
INMATE #52257
CAPP
15505 S PLEASANT VALLEY RD
BOISE ID 83634

TIM HANSEN
DISTRICT COURT JUDGE
E-MAILED BRIEF

ANTHONY GEDDES
ADA COUNTY PUBLIC DEFENDER'S OFFICE
E-MAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010
Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
Administrative Assistant

SFW/eas